

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT BALOG,

Plaintiff,

CASE NO. _____

HON. _____

v

EDUARDO MALDONADO and
CODYSUR TRUCKS, INC.,

Defendants.

PHILLIP S. SERAFINI (P45085)
EDWARD J. SHANKIN (P72785)
SERAFINI, MICHALOWSKI, DERKACZ
& ASSOC., P.C.
Attorneys for Plaintiff
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RUSSELL W. PORRITT II (P38659)
Attorney for Defendants,
WARD ANDERSON PORRITT BRYANT
LORD & ZACHARY
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NOTICE OF REMOVAL

Defendants, EDUARDO MALDONADO and CODYSUR TRUCKS, INC., pursuant to 28 U.S.C. 1332, 1441, and 1446, files this Notice of Removal of the above-captioned action from the Circuit Court for the County of Macomb, State of Michigan, where it is denominated as 2019-000864-NI, to the United States District Court for the Eastern District of Michigan. As grounds for removal, Defendants, Eduardo Maldonado and Codysur Trucks, Inc., state as follows:

1. On March 4, 2019, Plaintiff filed a Complaint in the Macomb County Circuit Court. See Plaintiff's Complaint attached as ***Exhibit A***.
2. Plaintiff purportedly served Defendants, Eduardo Maldonado and Codysur

Trucks, Inc., on March 8, 2019.

3. This is a third party motor vehicle negligence claim filed by the Plaintiff against Defendants, Eduardo Maldonado and Codysur Trucks, Inc., for injuries allegedly sustained in a motor vehicle accident on April 25, 2016.

4. Upon information and belief, Plaintiff seeks to recover in excess of \$25,000 for the damages Plaintiff alleges to have suffered. Plaintiff claims to have suffered injuries to his neck, back, head, left shoulder, and additional physical and psychological injuries, all of which allegedly constitute a serious impairment of bodily function and/or serious and permanent disfigurement. Therefore, without admitting, and expressly denying the validity of Plaintiff's causes of action, the amount in controversy in this action exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

5. In his complaint, Plaintiff alleges that he is a resident of the City of Sterling Heights, County of Macomb, State of Michigan.

6. Defendant Codysur Trucks, Inc. is a foreign corporation headquartered in the state of Texas, and Eduardo Maldonado is a resident of the state of Texas.

7. Accordingly, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, because this action is between citizens of different states, there is complete diversity of citizenship between all parties and their members and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs. Removal of this action is therefore proper pursuant to 28 U.S.C. § 1441.

8. This Notice of Removal was timely filed pursuant to 28 U.S.C. § 1446(b), as Defendants, Eduardo Maldonado and Codysur Trucks, Inc., removed the case within 30 days of the receipt of the Complaint by the Defendants. See **Exhibit B** attached hereto.

9. The United States District Court for the Eastern District of Michigan includes the county in which the state court action is now pending. Thus, this Court is the proper venue for this action pursuant to 28 U.S.C. § 1446(a).

10. Pursuant to 28 U.S.C. § 1446(d), Defendants Eduardo Maldonado and Codysur Trucks, Inc., filed a written notice of this removal with the Clerk of the Circuit Court for the County of Macomb. See **Exhibit B** attached hereto. Copies of the Notice of Filing and this Notice of Removal were served upon Plaintiff's counsel as required by 28 U.S.C. § 1446(d) on April 5, 2019.

WHEREFORE, this action should be removed to the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

WARD ANDERSON PORRITT, BRYANT
LORD & ZACHARY

By: /s/ Russell W. Porritt II

RUSSELL W. PORRITT II (P38659)
Attorneys for Defendants
4190 Telegraph Rd., Ste. 2300
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(248) 593-1440; 593-7920
rporritt@wardanderson.com

DATED: April 5, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by electronic filing at their respective e-mail addresses as disclosed by the pleadings of record herein and/or by U.S. Mail, on April 5, 2019. I declare under penalty of perjury that the above statement is true to the best of my knowledge, information and belief.

/s/ Bonnie L. Klimek
Bonnie L. Klimek

EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

ROBERT BALOG,

Plaintiff,

2019 - 000864 - NI
Case No. 19 - NI

-vs-

Hon. JENNIFER FAUNCE

EDUARDO MALDONADO and
CODYSUR TRUCKS, INC.

Defendants.

PHILLIP S. SERAFINI (P45085)
EDWARD J. SHANKIN (P72785)
Attorneys for Plaintiff
SERAFINI, MICHALOWSKI, DERKACZ & ASSOC., P.C.
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FRED MILLER
Macomb County Clerk

RECEIVED
MAR - 4 2019

COMPLAINT AND DEMAND FOR JURY TRIAL

There is no other pending or resolved civil action arising out of
the transaction or occurrence alleged in this Complaint.

/s/ Edward J. Shankin
Edward J. Shankin

NOW COMES Plaintiff, ROBERT BALOG, by and through his attorneys, SERAFINI,
MICHALOWSKI, DERKACZ & ASSOCIATES, P.C., and for his Complaint states as follows:

1. That the Plaintiff, ROBERT BALOG, was at all times relevant hereto a resident of the
City of Sterling Heights, County of Macomb State of Michigan.

2. That the Defendant, EDUARDO MALDONADO, upon information and belief and at all times relevant hereto, was a resident of the City of San Benito, County of Cameron, State of Texas.
3. That the Defendant, CODYSUR TRUCKS, INC., (CODYSUR), upon information and belief is a foreign corporation authorized to conduct business within the County of Macomb, State of Michigan.
4. That the within complained of events took place in the City of Warren, County of Macomb, State of Michigan.
5. That the amount in controversy is in excess of TWENTY-FIVE THOUSAND AND 0/100 (\$25,000.00) DOLLARS, exclusive of costs, interest and attorney fees.
6. That on or about April 25, 2016, at or about 4:50 p.m., Plaintiff, ROBERT BALOG, was traveling eastbound on I-696 in the right lane between Mound Road and Van Dyke Avenue.
7. That at the aforementioned date and time, Defendant EDUARDO MALDONADO negligently changed lanes and thereby violently struck Plaintiff's vehicle causing severe damage to Plaintiff and Plaintiff's vehicle.
8. That, due to the collision, Plaintiff, ROBERT BALOG, sustained numerous serious permanent injuries and damages amounting to a serious impairment of a body function as contemplated under MCL §500.3135.
9. At all times relevant hereto, Defendant CODYSUR was the owner of the semi-truck, bearing license plate #R167555 and VIN #1FUJAPAV05DN94618, which was under the use and control of Defendant EDUARDO MALDONADO.

COUNT I – NEGLIGENCE OF EDUARDO MALDONADO

10. Plaintiff incorporates by reference paragraphs 1-9 as if fully restated herein.
11. That at the aforementioned time and place, Defendant EDUARDO MALDONADO was driving the semi-truck with the express and implied consent and knowledge of its owner, CODYSUR, and EDUARDO MALDONADO was in the course and scope of his employment with CODYSUR when the accident occurred.
12. That, upon information and belief, on or about April 25, 2016, Defendant EDUARDO MALDONADO owed Plaintiff, ROBERT BALOG, and the public a duty to obey and drive in conformity with the duties embodied in the Common Law, the Motor Vehicle Code of the State of Michigan, as amended, and the ordinances of the City of Warren.
13. As a direct and proximate result of the negligence and/or gross negligence and/or willful and wanton misconduct of Defendant EDUARDO MALDONADO, Plaintiff, ROBERT BALOG, has suffered serious and permanent injuries and damages in the following manner, including but not limited to:
 - a. Neck injury;
 - b. Mid back injury;
 - c. Low back injury;
 - d. Head injury;
 - e. Left shoulder injury;
 - f. Physical pain and suffering;
 - g. Denial of social pleasures and enjoyment;
 - h. Humiliation and mortification;
 - i. Serious impairment of body function;
 - j. Potential serious permanent disfigurement;
 - k. Work loss benefits in excess of the daily, monthly and three (3) year limitations; and
 - l. Any and all other damages allowed under Michigan law.

**COUNT III – NEGLIGENT ENTRUSTMENT
AS TO DEFENDANT CODYSUR TRUCKS, INC.**

19. Plaintiff incorporates by reference paragraphs 1-18 as if fully restated herein.
20. Upon information and belief, Defendant CODYSUR had the opportunity to observe and have knowledge of Defendant EDUARDO MALDONADO's driving practices and habits and his ability to properly operate a vehicle and/or semi-truck.
21. At all times relevant hereto, Defendant CODYSUR knew or reasonably should have known that by allowing Defendant EDUARDO MALDONADO to operate it's vehicle that he would likely be involved in a traffic collision.
22. Defendant, CODYSUR, owed a duty to the general public and to the Plaintiff not to negligently allow its vehicle to be operated and under the control of Defendant EDUARDO MALDONADO without due care and caution and not to allow the semi-truck to be operated in such a manner as to endanger the general public and specifically, Plaintiff ROBERT BALOG's health, life and property in violation of the motor vehicle codes of the State of Michigan and the rules of common law.
23. Defendant CODYSUR allowed the vehicle to be entrusted to Defendant EDUARDO MALDONADO with its express and implied consent or knowledge.
24. Contrary to the duties owed to Plaintiff, Defendant CODYSUR negligently breached these duties by allowing their vehicle to be operated and under the control of a person who they knew or should have known would operate the vehicle in a careless, reckless or incompetent manner, in violation of the motor vehicle codes of the State of Michigan and the rules of common law.

25. As a result of Defendant CODYSUR's negligent entrustment of the vehicle to Defendant EDUARDO MALDONADO, Defendant EDUARDO MALDONADO was negligent as set forth in Count I, causing the Plaintiff, ROBERT BALOG, to sustain serious and permanent injuries.

**COUNT IV – DOCTRINE OF RESPONDEAT SUPERIOR
AS TO DEFENDANT CODYSUR TRUCKS, INC.**

26. Plaintiff incorporates by reference paragraphs 1-25 as if fully restated herein.

27. On the above date, Defendant EDUARDO MALDONADO was an employee and/or agent of Defendant CODYSUR.

28. At the time of the collision, Defendant EDUARDO MALDONADO was in the course and scope of his employment with Defendant CODYSUR.

29. As the employer of Defendant EDUARDO MALDONADO, Defendant CODYSUR is responsible for the negligent actions of its employee.

30. At the time of the above incident, Defendant CODYSUR, vicariously through their agent, Defendant EDUARDO MALDONADO, owed duties to the general public, but especially to ROBERT BALOG, to perform it's duties in a non-negligent manner.

31. At all times, Defendant CODYSUR, through its agents and employees, breached its duty to exercise ordinary care in one or more of the following ways:

- a. Failing to ensure CODYSUR employees were properly trained, licensed and/or supervised to operate a semi-truck such as the semi-truck involved in the subject collision;
- b. Failure to warn the Plaintiff prior to the collision in question;
- c. Failing to hire, manage, supervise and train employees and/or agents who were competent to operate a semi-truck in a reasonable manner;

- d. Failure to create, implement, and enforce a safety driving and operation policy and procedure to prevent from collision such as the incident complained of herein;
- e. Failing to hire employees who are competent and capable of acting reasonably under the circumstances;
- f. Failure to obey all applicable statutes and/or city ordinances; and
- g. All other breaches of duty identified in deposition testimony and/or answers to interrogatories and/or all other discovery, and all other breaches that become knowing throughout litigation and all of which is hereby adopted by reference.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in favor of Plaintiff and against Defendants in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars, plus interest, costs and attorney fees.

DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff, ROBERT BALOG, by and through his attorneys, SERAFINI, MICHALOWSKI, DERKACZ & ASSOCIATES, P.C., and respectfully requests a Trial by Jury.

Respectfully Submitted,
SMDA, P.C.

/s/ Edward J. Shankin
PHILLIP S. SERAFINI (P45085)
EDWARD J. SHANKIN (P72785)
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(586) 264-3756

DATED: February 28, 2019

MAR - 4 2019
FRED MILLER
Macomb County Clerk

RECEIVED

EXHIBIT B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

ROBERT BALOG,

Plaintiff,

CASE NO. 2019-000864-NI
HON. JENNIFER FAUNCE

v

EDUARDO MALDONADO and
CODYSUR TRUCKS, INC.,

Defendants.

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NOTICE OF FILING FOR REMOVAL

Pursuant to 28 U.S.C. § 1446(d), Defendants EDUARDO MALDONADO and CODYSUR TRUCKS, INC., hereby give notice to the Circuit Court of Macomb County, Michigan and PHILLIP S. SERAFINI, Esq. as attorney for Plaintiff, Robert Balog, that on April 5, 2019, Defendants EDUARDO MALDONADO and CODYSUR TRUCKS, INC., a resident of a foreign state and a foreign corporation, respectively, have filed a Notice of Removal, thereby removing the above-entitled action to the United States District Court for the Eastern District of Michigan. The filing of this notice stays all proceedings in this Court.

Respectfully submitted,

WARD ANDERSON PORRITT, BRYANT
LORD & ZACHARY

By: /s/ **Russell W. Porritt II**

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Attorneys for Defendants
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rporritt@wardanderson.com

DATED: April 5, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by electronic filing at their respective e-mail addresses as disclosed by the pleadings of record herein and/or by U.S. Mail, on 4/5/19. I declare under penalty of perjury that the above statement is true to the best of my knowledge, information and belief.

/s/ **Bonnie L. Klimek**

Bonnie L. Klimek